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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,650	03/24/2004	Kenneth L. Wantink	ACSC 68184 (2872C3)	3900
24201	7590	09/01/2004	EXAMINER	
FULWIDER PATTON LEE & UTECHT, LLP HOWARD HUGHES CENTER 6060 CENTER DRIVE TENTH FLOOR LOS ANGELES, CA 90045			THOMPSON, MICHAEL M	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 09/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/807,650	Applicant(s) WANTINK, KENNETH L.	
	Examiner Michael M. Thompson	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32 and 33 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 32 and 33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03/24/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 32-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,746,423. Although the conflicting claims are not identical, they are not patentably distinct from each other because both substantially recite an elongated shaft having an inflation lumen, a guidewire lumen, a proximal shaft section which defines a proximal portion of the inflation lumen and which comprises a tubular member having a proximal end and a distal end, and a distal shaft section which defines a distal portion of the inflation lumen in fluid communication with the proximal portion of the inflation lumen, the distal shaft section comprising a first distal outer tubular member having a proximal end secured to the distal end of the proximal shaft section tubular member; a second distal outer tubular member having a proximal end secured to a distal end of the first distal outer tubular member, and an inner tubular member disposed within the first and second distal outer tubular members and defining a guidewire lumen, the guidewire lumen

having a guidewire proximal port formed by a side opening extending through a sidewall of the outer tubular member with a section of the inner tubular member in the side opening and fused to the sidewall of the outer tubular member, and the second distal outer tubular member having an inner surface which extends around a circumference of the second distal outer tubular member and which is spaced apart from the outer surface of the inner tubular member so that the inflation lumen in the second distal outer tubular member has an annular shape around the outer surface of the inner tubular member, and a portion of the first distal outer tubular member being fused to an outer surface of the inner tubular member, the portion extending from the proximal end of the inner tubular member to a location proximal to the second distal outer tubular member; and an inflatable balloon on the distal shaft section having a proximal end secured to the distal end of the second distal outer tubular member, a distal end secured to the inner tubular member, and an interior in fluid communication with the inflation lumen. They further recite the inflation lumen extending along the portion of the first distal outer tubular member fused to the outer surface of the inner tubular member is defined by an inner surface of the first distal outer tubular member.

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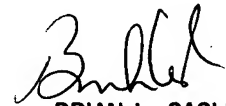
Contacts

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Michael Thompson whose telephone number is (703) 305-1619. The Examiner can normally be reached on Monday through Friday from 9 am to 5 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Primary, Brian Casler, can be reached on (703) 308-3552. The official fax phone number for all submissions to the organization where this application or proceeding is assigned is (703) 872-9306.

Michael M. Thompson

Patent Examiner



BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

MT 

August 21, 2004